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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

NOV 15 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Closed Captioning Requirements for) ET Docket No. 99-254
Digital Television Receivers)

REPLY OF HOME BOX OFFICE

Home Box Office ("HBO"), a Division of Time Warner Entertainment Company, L.P. ("TWE"), by its attorneys, hereby submits its reply to comments submitted in response to the Notice of Proposed Rulemaking ("*Notice*"), released in the above-captioned proceeding on July 15, 1999.^{1/} The Commission's *Notice* sought comments on proposed "technical standards for the display of closed captioning on digital television (DTV) receivers" and rules to "require the inclusion of closed captions decoder circuitry in DTV receivers."^{2/} The *Notice* was issued pursuant to Sections 303(u) and 330(b) of the Communications Act of 1934, as amended.^{3/}

Based on the record developed in the comments, HBO submits the following: 1) the Commission should adopt a period of at least two years between the date that the DTV captioning rules are adopted and the date they become effective; 2) the Commission should declare that programs captioned under the existing Electronic Industries Alliance ("EIA") 608

^{1/} FCC 99-180.

^{2/} *Notice* at ¶ 1.

^{3/} 47 U.S.C. §§ 303(u), 330(b).

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standard would be compliant with the broader DTV EIA- 708 standard when EIA-608 captioning is displayed on DTV receivers; 3) if the Commission does not adopt the preceding interpretation of the EIA-708 standard, the Commission should promulgate the separate digital captioning ramp-up schedule proposed by HBO in its initial comments; and 4) the Commission should adopt its proposal to include in the DTV captioning rules only the parameters of the EIA-708 standard necessary to ensure the availability of closed captioning on DTV receivers.

I. THE COMMISSION SHOULD ADOPT A PERIOD OF AT LEAST TWO YEARS BETWEEN THE DATE THAT THE DTV CAPTIONING RULES ARE ADOPTED AND THE DATE THEY BECOME EFFECTIVE

In its initial comments, HBO indicated its belief that it would take at least twenty-four (24) months, and perhaps longer, to incorporate EIA-708 technology into television receivers. In addition, HBO also stated its belief that manufacturers of television production equipment need a similar amount of time to design, test and produce equipment capable of creating EIA-708 captioning for DTV.

HBO's view is supported by numerous other commenters who have estimated that the period needed for developing and implementing the new technology must be longer than the one year proposed by the Commission.^{4/} Some members of the equipment manufacturing community estimated that as many as three years would be needed.^{5/} Many of these parties

^{4/} Comments from General Instruments Corporation at 14, and National Association of Broadcasters at 9 (both noting that one year is insufficient); National Cable Television Association at 4, and Thomson Consumer Electronics at 5 (both suggesting a 2-year period).

^{5/} Comments from Consumer Electronics Manufacturers Association at 13, and Toshiba America Consumer Products at 3 (both estimating three years before any DTV receivers with EIA-708 captioning capability are ready).

noted, as did HBO, that there needs to be time to develop the technology and test it completely.

Although some commenters urged the Commission to implement the rules rapidly,^{6/} these parties did not supply evidence to show how this could be accomplished in practice. Under the circumstances, the Commission must defer to those in the industry who work with the captioning technology and are knowledgeable about the process for developing, testing and marketing equipment employing new technical features. It would be fruitless to set a deadline that does not allow manufacturers enough time to ensure that the equipment embodying the new DTV captioning standards is working properly.

II. IF CAPTIONING MEETING THE EIA-608 STANDARD IS DEEMED TO COMPLY WITH THE DTV CAPTIONING RULES, THERE WOULD BE NO NEED FOR A SEPARATE "RAMP UP" SCHEDULE FOR CAPTIONING DTV PROGRAMMING

A number of commenters noted that the EIA-708 standard under consideration by the Commission has, as one of its components, captioning meeting the existing EIA-608 standard.^{7/} Because the EIA-708 protocol includes the EIA-608, EIA-608 captioning will function properly on DTV receivers. That being the case, these parties reasoned that if programming were

^{6/} Comments of Telecommunications for the Deaf, Inc. at 10 (noting the FCC should implement the rules in one year, if not sooner); Comments of National Association of the Deaf and the Consumer Action Network (urging a one-year adoption period); Comments of WGBH Educational Foundation (noting a one-year transition period is sufficient because it contends that testing tools and materials are already nearing completion).

^{7/} Comments of General Instruments Corp. at 5; Comments of National Association of Broadcasters at 2, 6 (urging the Commission to allow for the standard, especially during the DTV transition period); Comments of Media Captioning Service at 2, 4.

captioned in EIA-608, the programming would not have to be recaptioned in an enhanced format once the EIA-708 standard became effective. HBO agrees with that interpretation.

In its initial comments in this proceeding, HBO proposed that if the rules required additional captioning in the EIA-708 format beyond that currently being done using EIA-608, then the Commission would be required to have a “ramp-up” schedule for DTV captioning that was separate from and longer than the analog captioning schedule set forth in Section 79.1 of the rules.^{8/} If, however, the Commission allows closed-captioning for DTV using the EIA-608 standard, there should not be a need for a longer schedule for reaching DTV captioning levels, because programmers will not need to purchase and test additional technology and equipment before commencing to caption DTV programming. The transition to digital captioning thus would occur more rapidly because the existing EIA-608 captioning could be incorporated into programming that eventually will be converted for DTV display.

If, on the other hand, the Commission requires closed-captioning for DTV to meet some of the requirements of Section 9 of EIA-708 that are enhancements to EIA-608, there will be a need for a different ramp-up schedule that phases in DTV captioning over a longer period. Beginning with the effective date of the digital rules, by which time digital production equipment with EIA-708 capability should be available, there would need to be a two-year ramp-up period during which no specific captioning benchmarks are required. After that period, and at two year intervals, there could be progressively higher benchmarks for captioning digital programming similar to the current analog schedule.

^{8/} 47 C.F.R. § 79.1.

Unrealistic deadlines for early attainment of high levels of mandatory digital captioning employing the aspects of EIA-708 that have not yet been incorporated into DTV production equipment would not benefit the industry, or the public at large. Programmers need time to ensure that the captioning equipment and procedures have been fully tested and are ready for commercial deployment before any captioning with the new EIA-708 technology is released to the public. The Commission should recognize the realities of digital captioning and provide appropriate transition periods before mandatory captioning levels become effective if it intends to require captioning using features of EIA-708 that are in addition to those contained in EIA-608.

Affirming that EIA-608 captioning is consistent with DTV captioning rules does not mean that the enhanced features of other portions of the EIA-708 standard will not be available to consumers. In fact, HBO believes that, as production equipment becomes available that will permit captioning using the other aspects of EIA-708, programmers will have every incentive to employ these capabilities. HBO learned years ago that there is a market for captioned programs, and HBO responded to that market by voluntarily captioning significant amounts of its program schedules.^{9/} Over the years, HBO captioners have developed and refined their own captioning “style” designed to present captioning in a way that best meets the desires of HBO’s viewers.

The Commission recognized in an earlier Report and Order on captioning that marketplace incentives would work to ensure high quality captioning. There, the Commission resolved to “place maximum reliance on competitive market forces to develop efficient and cost

^{9/} For a discussion of HBO’s captioning initiatives, see Comments of HBO filed in MM Docket No. 95-175 (submitted Feb. 28, 1997).

effective methods for captioning and for ensuring a high level of quality for all captions.”^{10/} If the Commission allows adequate time for enhanced captioning to develop, the competitive incentives in the marketplace will ensure that the enhanced capabilities of EIA-708 are vigorously exercised.

III. THE COMMISSION SHOULD ADOPT ONLY THOSE PARAMETERS NECESSARY TO ENSURE AVAILABILITY OF CLOSED CAPTIONS

A number of commenters in this proceeding have asked the Commission to adopt as part of the rules the EIA-708 standard in its entirety, not just the provisions of Section 9 as proposed by the Commission. The National Association of the Deaf and the Consumer Action Network asserted that adoption of all of EIA-708 would allow viewers even more flexibility to receive various captioning styles, from colors to fonts.^{11/} These parties also stated that additional enhanced features would permit consumers to customize their captioning to a greater degree.^{12/}

HBO submits that the Commission would be exceeding its statutory mandate if it required what are essentially optional enhancements to the basic display of closed captions. In connection with the enactment of the Television Decoder Circuitry Act to require closed-captioning capabilities in television receivers, the Senate Report noted that Congress was

^{10/} In the Matter of Closed Captioning and Video Description of Video Programming, Report and Order, 13 FCC Rcd. 3272, 3279 (rel. August 22, 1997).

^{11/} Comments from the National Association of the Deaf and the Consumer Action Network at 5.

^{12/} Id. at 4.

directing the Commission to “ensure that as new video technologies are developed, closed-captioned programs continue to be accessible to the public.”^{13/}

The legislative history also clearly shows that the intent was to provide basic accessibility. The Senate Report stated:

[I]t is not the intent of the bill to require, directly or indirectly, standardization of a specific decoding chip or specific decoding circuitry, but simply to mandate that televisions be capable of decoding and displaying adequately closed captions -- i.e., the captions or subtitles which translate spoken words or sounds ...^{14/}

Moreover, the Commission itself has already concluded in the closed-captioning proceedings for analog television that the market should determine the details of caption quality and enhancements.^{15/} By adopting requirements to do anything beyond what is necessary to ensure accessibility, the Commission would be delving into details which it has already determined are best left to the market.

HBO believes the Commission is taking the right approach to adopt no more than the parameters of EIA-708 that are necessary to ensure that closed captioning is accessible over DTV receivers. Beyond that, the Commission should permit the marketplace to stimulate the creativity of programmers to select capabilities of the EIA-708 that will distinguish their services and permit the manufacturing community to incorporate various EIA-708 optional features to differentiate their DTV receiver products.

^{13/} S. REP. NO. 101-393 at 9,10 (1990), *reprinted in* 1990 U.S.C.A.N 1438, 1446-47.

^{14/} *Id.* at 9, 1990 U.S.C.A.N at 1446.

^{15/} See In the Matter of Closed Captioning and Video Description of Video Programming, Report and Order, 13 FCC Rcd. 3272 (Rel. August 22, 1997).

IV. CONCLUSION

For the foregoing reasons, HBO urges the Commission to allow for a two year period between the adoption of the DTV captioning rules and their effective date. HBO also concurs in the interpretation that EIA-608 captioning, because it is imbedded in the EIA-708 standard, would comply with the DTV rules. If that interpretation is not sustained, then the Commission must provide an adequate ramp-up schedule for the captioning of DTV programming. Finally, HBO urges the Commission to reaffirm its commitment to adopt only the essential elements of a standard that are necessary to ensure basic accessibility of DTV captioning.

Respectfully submitted

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November 15, 1999

CERTIFICATE OF SERVICE

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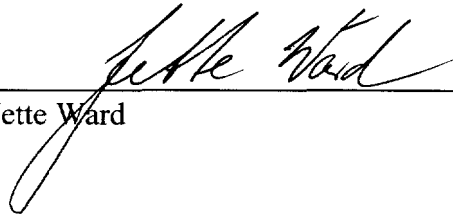
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